

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NCS MULTISTAGE INC.

Plaintiff,

vs.

TCO AS
TCO PRODUCTS INC.
ARSENAL INC.

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 6:20-cv-00622-ADA

SCHEDULING ORDER

Parties' Proposed Deadline	Item
Dec. 14, 2020	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e. the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
2 weeks after the Court's ruling on TCO Products's and TCO AS's respective Motions to Dismiss (D.I. 21 and 40)	Deadline for Motions to Transfer
February 8, 2021	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of the court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

	referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the prior two years, unless the parties agree to some other timeframe.
February 26, 2021	Parties exchange claim terms for construction.
March 12, 2021	Parties exchange proposed claim constructions.
March 19, 2021	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony. ² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
March 26, 2021	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
April 2, 2021	Plaintiff files Opening claim construction brief, including any arguments that any claim terms are not indefinite.
April 23, 2021	Defendant files Responsive claim construction brief.
May 7, 2021	Plaintiff files Reply claim construction briefs.
May 21, 2021	Defendant files a Sur-Reply claim construction brief.
May 24, 2021	Parties submit Joint Claim Construction Statement. See General Issues Note #8 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
May 28, 2021	Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ³
June 4, 2021	<i>Markman</i> Hearing at 9:00 a.m.

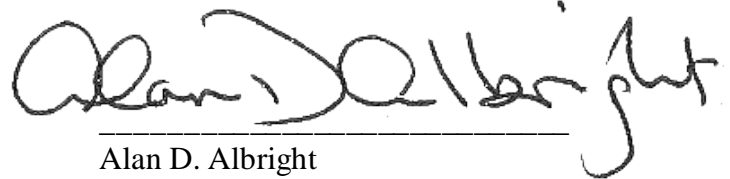
² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

³ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

June 7, 2021	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
July 16, 2021	Deadline to add parties.
July 30, 2021	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
September 24, 2021	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims. (Note: This includes amendments in response to a 12(c) motion.)
October 1, 2021	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
October 4, 2021	Close of Fact Discovery.
October 11, 2021	Opening Expert Reports.
November 8, 2021	Rebuttal Expert Reports.
November 29, 2021	Close of Expert Discovery.
December 6, 2021	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
January 7, 2022	Dispositive motion deadline and Daubert motion deadline. See General Issues Note #8 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
January 21, 2022	Response to Dispositive motion deadline and Daubert motion

January 28, 2022	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
February 4, 2022	Serve objections to pretrial disclosures/rebuttal disclosures.
February 7, 2022	Serve objections to rebuttal disclosures and File Motions <i>in limine</i> .
February 12, 2022	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i> .
February 19, 2022	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
February 22, 2022	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
February 25, 2022	Final Pretrial Conference.
March 6, 2022 ⁴	Jury Selection/Trial.

SIGNED this 7th day of January 2021



Alan D. Albright
United States District Judge

⁴ If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.